

**REMARKS**

The Final Office Action dated March 24, 2004 rejected claims 1 and 2 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent 6,137,789 to Honkasalo (hereinafter "Honkasalo"). Claim 3 was rejected under 35 U.S.C. § 103(a) as being obvious in light of U.S. Patent 6,137,789 to Honkasalo.

**Claim Rejections under 35 U.S.C. § 102**

Claims 1 and 2 have been rejected under 35 U.S.C. § 102(e) as being anticipated by Honkasalo.

To anticipate a claim, the prior art reference must teach every element of the claim. "A claim is anticipated only if each and every element as set forth in the claim is found either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

Applicants respectfully submit that claims 1 and 2 are not anticipated by Honkasalo for the reason and explanations provided below.

Applicants respectfully submit that Honkasalo does not disclose the limitation "a method for transmitting data using a single channel" as found in amended claim 1.

Honkasalo discloses a mobile station that is able to determine a required data rate based on data buffer usage. (Abstract). A high speed mobile station requests a number of parallel code channels based on the amount of data stored in a transmit data buffer. (Col. 5, lines 58-60). The base station then assigns a number of parallel code channels up to a maximum number, for a given period of time. The number of channels is also based on the current interference condition in the network. (Col. 5, lines 60-64). The time period is a network parameter and is explicitly signaled to the mobile station by the base station. (Col. 5, lines 65-67). The mobile then proceeds to transmit on all assigned code channels. (Col. 6, lines 1-2). Applicants respectfully submit that Honkasalo does not disclose "a method for transmitting data using a single channel," as found in amended claim 1.

Applicants also submit that claims 2 and 3 are allowable as depending from an allowable base claim.

**Claim Rejections under 35 U.S.C. § 103**

To establish a *prima facie* case of obviousness, the prior art reference (or references when combined) must teach or suggest all the claim limitations. "The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in Applicants' disclosure." In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

Applicants respectfully submit that claim 3 is allowable for the same reasons as given above for claim 1.

Additionally, Applicants submit that Honkasalo teaches away from the method used in claim 3. Honkasalo teaches establishing multiple channels for a high data rate transmission and does not address frame structures used within a single channel. Thus, the reference teaches away from Applicants' disclosure.

**REQUEST FOR ALLOWANCE**

In view of the foregoing, Applicants submit that all pending claims in the application are patentable. Accordingly, reconsideration and allowance of this application is earnestly solicited. Should any issues remain unresolved, the Examiner is encouraged to telephone the undersigned at the number provided below.

Respectfully submitted,

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